

**RESPONSE TO COMMENTS  
BY ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT AND  
ENVIRONMENTAL PROTECTION AGENCY  
DRAFT FINDING OF SUITABILITY TO TRANSFER  
SUPERFOST NO. 2  
FORT MCCLELLAN, ALABAMA**

*General Comments*

**Comment 1:** ADEM and EPA will issue final comment(s) on the FOST expressly contingent upon final documents being provided by DoD. The comments provided herein, as the underlying DoD documents, are draft in nature.

Response: Comment noted.

**Comment 2:** ADEM and EPA expect to receive a copy of the deed(s) or other transfer documents inclusive of all terms (including notices/covenants) both prior to and after execution of the documents. The statement in the FOST that notices and restrictions will be included in the transfer documents affords less certitude of protection of human health and the environment than do the complete transfer documents.

Response: A copy of the deed will be provided for your records.

**Comment 3:** Section 330 of the Defense Authorization Act for Fiscal Year 1993, Public Law 102-484 as amended by Section 1002 of the Defense Authorization Act for Fiscal Year 1994, Public Law 103-160 provides that the Secretary of Defense shall hold harmless, defend and indemnify the persons that acquire ownership or control of any facility at a military installation that is closing or closed pursuant to a base closure law from any claim for personal injury or property damage or economic loss that results from the release of hazardous substances or petroleum products as a result of DoD activities. Please include such indemnification language in the FOST and/or deed.

Response: It is inappropriate for the Army to include PL 102-484 Section 330 indemnification language in the FOST. The primary purpose of the FOST is to document the environmental condition of the property and certify that the property is suitable for transfer based on the environmental restrictions that will be incorporated in the real estate document. Furthermore, absent actual indemnification language being included in the FOST, as a matter of law, the Army has an obligation to meet its requirements under Section 330 of PL 102-484. However, the Army will place PL 102-484 Section 330, indemnification language in the Deed, as the appropriate place to notice a legal right or responsibility afforded to the transferee.

**Comment 4:** EPA and ADEM expect any of our comments not incorporated into or addressed by the final FOST and/or deed or assignment of transfer, be presented as unresolved regulatory comments in an attachment to the final documents. "Regulatory agencies will be notified at the initiation of the EBS and the FOST. The process of development of these documents will be

designed to assure that regulators are provided adequate opportunity to express their views. Regulators will be provided with workable draft documents as they become available. Regulatory comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved regulatory comments will be included as attachments to the EBS or the FOST.”

**Please take note of the following DoD guidance on the Environmental Review Process to reach a Finding of Suitability to Transfer (FOST) for Uncontaminated Property, § IV (A).**

Response: Please reference Section 8.0 of the FOST document that states “The U.S. EPA Region 4, ADEM, and the public were notified of the initiation of the FOST. ADEM and EPA comments received during the FOST development will be reviewed and incorporated as appropriate. A copy of unresolved regulatory comments will be included in the FOST.”

### *Specific Comments*

**Comment 1: Page iii, Acronyms, List of Acronyms: Please add the following acronyms to the list of acronyms: CAL and HUD**

Response: CAL and HUD will be added to the list of acronyms.

**Comment 2: Page 1, Section 2.0, Figure 1: Please add a scale to the figure and reference Calhoun County on the State Map.**

Response: A scale will be added to the figure and reference of Calhoun County will be made on the State Map on Figure 1.

**Comment 3: Page 4, Section 3.1, Text of last paragraph and also Figure 5 and Table 4: Please clarify why this FOST discusses adjacent sites. Please discuss in more detail why this information is important to the FOST. Table 4 implies that this adjacent property is also subject to transfer. Please clarify that this is correct.**

Response: Adjacent properties are discussed to address potential hazards, if any, from parcels in the immediate vicinity of the transferred property.

Table 4 lists adjacent properties to SUPERFOST No. 2 property as referenced in Section 3.1. Neither the text nor the table implies that adjacent properties will be transferred.

**Comment 4: Page 5, Section 3.3.2, First Paragraph, Last Line/Facility 251D, Parcel 3(4): The sentence states “...the method of soil disposal was not documented in the closure report.” What happened to the six cubic yards of soil that was reportedly contaminated with TPH at 5,800 ppm? Was the parcel remediated and the soil properly disposed in accordance with ADEM regulations? Any changes to this paragraph should be reflected in Table 5.**

Response: Facility 251D, Parcel 3(4) is located in the GSA Warehouse Area. The area will be removed from the SUPERFOST No. 2 property; consequently Facility 251D will not be addressed in this FOST.

**Comment 5: Page 6, Section 3.3.2, Fourth line/Facility 326D and G, Parcel 5(3): This sentence states that “Concentrations of TPH ranged from 140 to 530 ppm and total lead ranged from 15 to 26 ppm.” Was this soil excavated and treated on/off site? If not, where was the soil taken for disposal? Please clarify. Any changes to this Line should be reflected in Table 5.**

Response: There are no records of soil treatment or disposal for the site. Recent site investigation results indicated that no chemicals associated with the site present an unacceptable risk to either human health or the environment. A conclusion that “No Further Action” is required for the site was concurred with by ADEM in a letter dated November 28, 2001.

**Comment 6: Page 6, Section 3.3.2, Fifth and Sixth Line/Facility 338F, Parcel 42(4): The sentence states that “Approximately 3.5 cubic yards of stockpiled soils were covered with plastic sheets to await thermal volatilization.” Please present the final disposition of the soil. Were the soils ultimately treated by means of thermal volatilization? Any changes to this sentence should be reflected in Table 5. Please clarify.**

Response: A closure report for Facility 338F, Parcel 42(3), dated April 1996 indicates that the stockpiled soil was treated by means of thermal volatilization. In addition, recent site investigation results (1999) indicated that no chemicals associated with the site present an unacceptable risk to either human health or the environment. A conclusion that “No Further Action” is required for the site was concurred to by ADEM in a letter dated November 28, 2001.

**Comment 7: Page 8, Section 3.3.2, First Line at top of page/Facility 3176D, Parcel 26(3): This sentence states that “Soil analytical results indicated TPH concentrations of up to 751 ppm.” Was the soil excavated and treated or disposed? If so please clarify the location of disposal and the type of treatment. Any changes to this line should be reflected in Table 5.**

Response: There are no records of soil treatment or disposal for the site. Recent site investigation results (1999) indicated that no chemicals associated with the site present an unacceptable risk to either human health or the environment. A conclusion that “No Further Action” is required for the site was concurred with by ADEM in a letter dated July 30, 2001.

**Comment 8: Page 8, Section 3.4, First sentence, Polychlorinated Biphenyls (PCBs): The sentence states that “In 1996, three PCB contaminated pole transformers located adjacent to Building 325 were removed from service and properly disposed at an offsite location.” Were the transformers brought to a different location on Fort McClellan property and disposed or were they disposed off Base? How were they disposed (landfill, scrapped, etc)? Please clarify.**

Response: The three transformers were disposed through the Defense Reutilization and Marketing Organization (DRMO) to Trans-Cycle Industries in Pell City, AL. The sentence will be revised to state "In 1996, three PCB contaminated ... and properly disposed through the Defense Reutilization and Marketing Organization."

**Comment 9: Page 12, Section 9.0, Last Sentence/National Environmental Policy Act (NEPA) Compliance and Consistency with Local Reuse Plan: The sentence states that, "In addition, the proposed transfer is consistent with the intended reuse of the property as set forth in the Comprehensive Reuse Plan adopted by the JPA." ADEM understands that there is some degree of disagreement between the Army and Joint Powers Authority (JPA) regarding the definitions of proposed land use (i.e., recreational, commercial, etc.). Fort McClellan has reportedly based its proposed land uses described in this FOST on the 1997 *Comprehensive Reuse Plan*. The Department believes that the JPA and the Army should agree on the definition of present and future land uses so that Fort McClellan is remediated according to the true intended reuse of the property. Please revise the report to include the latest agreed upon land use definitions. If the Army believes that the land uses presented in this FOST are to remain the same, the Army should confirm that the JPA will accept the 1997 definitions.**

Response: The Army incorporates into its response actions the various land use categories described in the *Fort McClellan Comprehensive Reuse Plan*, November 1997, as amended by the Economic Development Conveyance application submitted to the Army by the JPA on March 2, 2000. The Army continues to use the 1997 Plan, as amended. The JPA has not officially requested that the Army use another plan. The transition force has informed the JPA of the Army's intent to use the 1997 Comprehensive Reuse Plan and delineated the reuse definitions therein and has not received any response or objection to the Army's intent to do so. The Army is unaware of any disagreement with the JPA on the definitions of land use. The JPA did not provide definitions of land use in its reuse plan referenced above but rather stated reuse categories in the plan. For purposes of hazardous and toxic contamination risk assessment, the Army matched the reuse categories with the closest EPA standard receptor scenarios. These receptor scenarios use default assumptions that are very conservative and are designed to cover for the most highly exposed individuals that could reasonably be expected to be present on a site under a given reuse option or exposure scenario.

**Comment 10: Page 13, Section 11.0, First Sentence/For Category 4 Property: Please change "T" to "(I)" in the "CERCLA 120(h)(3)(A)(ii)L."**

Response: The change will be made to reflect the comment.

**Comment 11: Table 1: This table contains missing information in the Area category (e.g., Page 1 of 18 Bldg. No. 216). There are several Areas that do not have square footage noted. Also, information in the "Remarks/Remedial Action" section is missing (e.g., Page 6 of 18 Bldg. No. 264). Please review Table 1 carefully and fill out all blank spaces that apply to "Area" and "Remarks/Remedial Action."**

Response: Square footage was not entered for underground storage tanks (USTs) and load/unload dock ramps. Unit measures for USTs and dock ramps are recorded in gallons and each unit, respectively.

Category 1 properties are areas where no storage, release, or disposal of hazardous substances or petroleum products has occurred, therefore, there are/were no actions required for these parcels and no information in the Remarks/Remedial Action column.

**Comment 12: Table 3-2: Parcel 143(3) is listed twice, both in Table 3-2 (Category 3 Parcels) and in Table 4 (Adjacent Properties) where Parcel 143(3) should be listed. [Also, should Parcel 143(3) (Table 3-2) be listed as Adjacent Properties (See Figure 3) instead of Category 3 Parcels? Please clarify.]**

Response: A small portion of the northern part of Parcel 143(3) occupies Armor Road right-of-way and is included in the SUPERFOST No. 2 property, making the parcel eligible for inclusion in the Category 3 FOST parcels. In addition, a larger part of Parcel 143(3) is not included in the FOST but is in the immediate vicinity of the property proposed for transfer and thus qualifies as adjacent property.

**Comment 13: Table 4: Page 1 of 2: The title of this table suggests that the parcels are “adjacent properties.” (Please refer to Specific Comment No. 3). Also, on page 2 of 2, should Parcel 226(3) be added to the Parcel No. list? Please clarify.**

Response: Table 4 title is correct, the listed sites are “adjacent properties.”

A small portion of Parcel 226(3) occupies Castle Avenue right-of-way and is being included as part of SUPERFOST NO. 2 Property; however, the remaining portion of Parcel 226(3) occupies immediate adjacent property as shown on Figure 3 and is not included as part of this FOST. Parcel 226(3) will be added to the list of Adjacent Properties.

**Comment 14: Figure 1: Please add a scale to the expanded detail portion of the Figure (Calhoun County).**

Response: A scale will be added to Figure 1.

**Comment 15: Figure 4: Please add the name of the creeks and lakes to this figure.**

Response: Names of creeks and lakes will be added to Figure 4.

**Comment 16: Figure 5: Please add the name of the creeks and lakes to this figure.**

Response: Names of creeks and lakes will be added to Figure 5.

**Comment 17: Section 3.1, Environmental Condition of Property Categories. The property is characterized as either ECP Category 1 (areas where there has been no release or disposal of hazardous substances or petroleum products) or Category 3 (areas where there has been a release of hazardous substances**

but below levels that require remediation) or Category 4 (areas where there has been a release of hazardous substances but all remedial action necessary to protect human health and the environment has been taken). Please clarify whether the FOST is intended to document the identification of the Categories 1 and 3 property as uncontaminated under CERCLA § 120(h)(4) and to request that the State concur in that identification. Note that CERCLA mandates the identification of uncontaminated property. Consulting EPA memorandum, Military Base Closures: Revised Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels under CERCLA Section 129(h)(4), may prove helpful in determining whether property may be characterized as uncontaminated.

Aerial photos consulted in making such determination should reflect prior usage of the property. The text does not state that aerial photos reflecting past uses were reviewed (i.e., current photos alone may not be sufficient). In addition, the requirement from CERCLA to conduct interviews with employees reads; "Interviews with current or former employees involved in operations on the real property...." Please clarify whether Fort McClellan's interviewing of Fort McClellan's Real Estate Personnel is sufficient to satisfy this statutory requirement.

Response: CERCLA § 120(h)(4) applies to Category 1 properties; areas on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of. Category 3 properties are areas where there has been a release of hazardous substances but below levels that require remediation, therefore, identification of Category 3 properties under CERCLA § 120(h)(4) is not appropriate.

Historical and current aerial photographs were utilized in making a determination of environmental condition of property.

In addition to the interviews with current FMC Real Estate and Environmental Office personnel, information gathered during the environmental baseline survey including interviews with current and/or former employees was also used in generating the FOST.

**Comment 18: Section 3.2, Storage, Release or Disposal of Hazardous Substances.** This section states that there is no evidence that hazardous substances were stored, released or disposed on the property in excess of reportable quantities. Because facilities located on the property (for example, Parcels 2(4), 6(4), and 20(4)) stored waste oil, a hazardous substance not exempted from coverage under CERCLA, it appears that this statement is inaccurate. Further, releases on those parcels apparently justified Fort McClellan's need to conduct removal actions.

Please quantify further information on historical releases at these parcels. CERCLA §120(h)(3)(A)(i) requires, in addition to the notice of the type and quantity of such hazardous substances, that notice be placed in the deed of the time at which such storage, release or disposal took place and of a description of the remedial action taken. Please verify whether such notice is

**required by 40 CFR 373 at these parcels, and modify the text in this section accordingly.**

Response: Waste oil is a non-regulated, non-hazardous special waste with no reportable quantity. The FMC Hazardous Waste Management Plan did not allow for disposal of hazardous substances in the storage tanks. In addition, the subcontractor, Safety Kleen, who was responsible for picking up and recycling the waste oil, tested the used oil for heavy metals, flash point and chlorinated solvents. The records do not indicate that any hazardous substances were present in the used oil tanks.

**Comment 19: Section 3.3.2, Underground Storage Tanks. This section mentions some underground storage tanks (USTs) that have been removed and certain ones that have been left in place. Mention should be made as to whether the USTs that were removed were removed in accordance with state and federal requirements, and whether those that were left in place were tested and determined to be in compliance with state and federal requirements.**

Response: All UST removals were conducted in accordance with ADEM Admin Code 335-6-15, and all remaining USTs meet the technical performance standards for new UST systems in ADEM Admin Code 335-6-15.

The text will be revised accordingly.

**Comment 20: Section 11.0, Finding of Suitability to Transfer. Because of the question about whether portions of the property should be identified as uncontaminated (see comment 18), it is unclear whether the covenants of CERCLA § 120(h)(3) or § 120(h)(4) are appropriate for some of the Category 3 property. Note that if portions of the property are determined to be "uncontaminated", it will be appropriate to revise the covenant and access clause accordingly.**

Response: See response to comment No. 17.

**RESPONSE TO COMMENTS  
BY U.S ENVIRONMENTAL PROTECTION AGENCY REGION IV  
DRAFT FINDING OF SUITABILITY TO TRANSFER  
SUPERFOST NO. 2  
FORT MCCLELLAN, ALABAMA**

*General Comments*

**Comment 1:** The Environmental Protection Agency (EPA) will issue final comment(s) on the FOST expressly contingent upon final documents being provided to EPA by DoD. EPA comments provided herein, as the underlying DoD documents, are draft in nature.

Response: Comment noted.

**Comment 2:** EPA expects a copy of the deed(s) or other transfer documents inclusive of all terms (including notices/covenants) both prior to and after execution of the documents. The statement in the FOST that notices and restrictions will be included in the transfer documents affords less certitude of protection of human health and the environment than do the complete transfer documents.

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Response: It is inappropriate for the Army to include PL 102-484 Section 330 indemnification language in the FOST. The primary purpose of the FOST is to document the environmental condition of the property and certify that the property is suitable for transfer based on the environmental restrictions that will be incorporated in the real estate document. Furthermore, absent actual indemnification language being included in the FOST, as a matter of law, the Army has an obligation to meet its requirements under Section 330 of PL 102-484. Therefore, the Army will place PL 102-484 Section 330, indemnification language in the Deed, as the appropriate place to notice a legal right or responsibility afforded to the transferee.

**Comment 4:** EPA expects to attach any of our comments, to the extent they are not incorporated into or addressed by the final FOST and/or deed or assignment of transfer, as unresolved regulatory comments in an attachment to the documents." Regulatory agencies will be notified at the initiation of the EBS and the FOST. The process of development of these documents will be



designed to assure that regulators are provided adequate opportunity to express their views. Regulators will be provided with workable draft documents as they become available. Regulatory comments received during the development of these documents will be reviewed and incorporated as appropriate. Any unresolved regulatory comments will be included as attachments to the EBS or the FOST." DoD Guidance on the Environmental Review Process to Reach a Finding of Suitability to Transfer (FOST) for Uncontaminated Property, § IV (A).

Response: Please reference Section 8.0 of the FOST document that states "The U.S. EPA Region 4, ADEM, and the public were notified of the initiation of the FOST. ADEM and EPA comments received during the FOST development will be reviewed and incorporated as appropriate. A copy of unresolved regulatory comments will be included in the FOST."

### *Specific Comments*

**Comment 1:** Section 1.0, Purpose. This section states that the property is intended to be used consistent with the Fort McClellan Comprehensive Reuse Plan, CERCLA and DoD and Army policy. In this section, please provide a brief summary description of the proposed uses.

Response: The Fort McClellan Comprehensive Reuse Plan is included as Attachment 5 to the FOST.

**Comment 2:** Section 3.1, Environmental Condition of Property Categories. The property is characterized as either ECP Category 1 (areas where there has been no release or disposal of hazardous substances or petroleum products) or Category 3 (areas where there has been a release of hazardous substances but below levels that require remediation) or Category 4 (areas where there has been a release of hazardous substances but all remedial action necessary to protect human health and the environment has been taken). Please clarify whether the FOST is intended to document the identification of the Categories 1 and 3 property as uncontaminated under CERCLA § 120(h)(4) and to request that the State concur in that identification. Note that CERCLA mandates the identification of uncontaminated property. Consulting EPA memorandum, Military Base Closures: Revised Guidance on EPA Concurrence in the Identification of Uncontaminated Parcels under CERCLA Section 129(h)(4), may prove helpful in determining whether property may be characterized as uncontaminated, though EPA's concurrence is, of course, not required for the identification process at Ft. McClellan.

Aerial photos consulted in making such determination should reflect prior usage of the property. The text does not state that aerial photos reflecting past uses were reviewed (i.e., current photos alone may not be sufficient). In addition, the requirement from CERCLA to conduct interviews with employees reads; "Interviews with current or former employees involved in operations on the real property...." Please clarify whether interviewing FMC Real Estate Personnel is sufficient to satisfy this statutory requirement.

Response: CERCLA § 120(h)(4) applies to Category 1 properties; areas on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of. Category 3 properties are areas where there has been a release of hazardous substances but below levels that require remediation, therefore, identification of Category 3 properties under CERCLA § 120(h)(4) is not appropriate.

Historical and current aerial photographs were utilized in making a determination of environmental condition of property.

In addition to the interviews with current FMC Real Estate and Environmental Office personnel, information gathered during the environmental baseline survey including interviews with current and/or former employees was also used in generating the FOST.

**Comment 3: Section 3.2, Storage, Release or Disposal of Hazardous Substances. This section states that there is no evidence that hazardous substances were stored, released or disposed of on the property in excess of reportable quantities. Since facilities located on the property (for example, Parcels 2(4), 6(4), and 20(4)) stored waste oil, a hazardous substance not exempted from coverage under CERCLA, it appears that this statement is inaccurate. Further, releases on those parcels justified conducting removal actions. Please quantify as best as can be done the amount of the release. CERCLA §120(h)(3)(A)(i) requires, in addition to the notice of the type and quantity of such hazardous substances, that notice be placed in the deed of the time at which such storage, release or disposal took place and of a description of the remedial action taken. Please verify whether such notice is required by 40 CFR 373 at these parcels, and modify the text in this section accordingly.**

Response: Waste oil is a non-regulated, non-hazardous special waste with no reportable quantity. The FMC Hazardous Waste Management Plan did not allow for disposal of hazardous substances in the storage tanks. In addition, the subcontractor, Safety Kleen, who was responsible for picking up and recycling the waste oil, tested the used oil for heavy metals, flash point and chlorinated solvents. There are no records of any of the hazardous substances present in the used oil tanks.

**Comment 4: Section 3.3.2, Underground Storage Tanks. This section mentions some underground storage tanks (USTs) that have been removed and some that have been left in place. Mention should be made as to whether the USTs that were removed were removed in accordance with state and federal requirements, and those that were left in place were tested and determined to be in compliance in accordance with state and federal requirements.**

Response: All UST removals were conducted in accordance with ADEM Admin Code 335-6-15, and all remaining USTs meet the technical performance standards for new UST systems in ADEM Admin Code 335-6-15.

The text will be revised accordingly.

**Comment 5: Section 3.10, Ordnance and Explosive. EPA is not commenting on this.**

Response: Comment noted.

**Comment 6: Section 11.0, Finding of Suitability to Transfer. Because of the question about whether portions of the property should be identified as uncontaminated (see comment 2), it is unclear whether the covenants of CERCLA § 120(h)(3) or § 120(h)(4) are appropriate for some of the Category 3 property. Note that if portions of the property are determined to be "uncontaminated", it will be appropriate to revise the covenant and access clause accordingly.**

Response: See response to comment No.2.